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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-782

ARCHIE PELTZMAN,

Petitioner,

v.

CENTRAL GULF LINES, INC.,

Respondent.

REPLY BRIEF OF PETITIONER

ARCHIE PELTZMAN,
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CORRECTIONS IN PETITIONER'S WRIT

1- Page i App. B33 Should Be App. A26 (Second Decision of Court of Appeals)

2- Page ii - Cooks & Stewards Vo. VII 1070, Should Be Vo. VIII 1070.

3- Page 4, After Union Security Clause (Add) Forbade Rehiring Him Without A "Clearance" From the Union. Petitioner

4- Page 4, App. A21, Should Be App. B 22 (2nd Court of Appeals Decision).

5- Page 6, App. B21-24, Should Be App. A26-32 First Court of Appeals Decision.

6- Page 48, After Only to (Add) Permanent Jobs & That The Union Made No

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Effort To.

7- Page 50, After Because (Add) He Failed & Refused

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ARCHIE PELTZMAN,

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CENTRAL GULF LINES, INC.

RESPONDENT.

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COUNTER QUESTIONS PRESENTED

Was Fraud involved in the deletion of relevant rehiring provision in bargaining agreement?

Were the Federal Rules of Civil Procedure & the Summary Judgment Rule Blantonly disregarded by the District Court?

STATUTES INVOLVED

29 U.S.C.A. Sec 412, 29 U.S.C.A. Sec. 402.

"Member or members in good standing when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization & who neither has voluntarily withdrawn from membership, nor has been expelled from membership after appropriate proceedings of the constitution & by laws of such organization"

General Maritime Law Title 46, containing over one hundred (100) Sections relating to seaman's employment specifically Sec. 599 (a)(p4) in Petitioner's Writ.

COUNTER STATEMENT REBUTTAL

Respondent rehashes the facts of the Case *(RB 2-4) but conveintly omits answering the charges in the petition of Fraud in deleting the original vacation rehiring c;aise & does not refute the

charges in the petition of lies & evasions of the Secy-Treasurer of the Union Mr. Smith.

Respondent emphatically alleges that the union security clause is valid, but neglects to rebut the six (6) Court Cases that the petitioner pleaded in his pleadings below including the certified Docket nr. 24737 (Pet Writ p. 19) *(Pet. App 24-41), in which the NLRB sealed the evidence against this union & all Court Cases involved discrimination against employees who were not members or delinquent in their dues.

Prior Proceedings Rebuttal

Petitioner rebuts the contention of the respondent (RB5) that the reversal

*RB 2-4 refers to Respondent's Brief

*Pet. App. refers to Docket nr. 75-7004, Petitioner' Appendix.

was solely related to the initiation fee. See the other issues remanded, Quote: (Pet Writ 32) "We therefore remand this case for the District Court to determine whether Central Gulf breached the collective bargaining agreement, and, if so, whether Peltzman's apparent failure to exhaust contractual grievance procedure should bar him from maintaining this suit". Also on (Pet Writ 29) Quote: "We reverse the judgment of the District Court & remand for a determination whether the collective bargaining agreement provides Peltzman any basis for relief".

Petitioner argues that nowhere in the District Courts 2nd decision is there any discussion of the rules & regulations relating to dismissal of seamen or their hire & tenure, & petitioner alleges that the bargaining agreement holds that petitioner could only be dismissed for

"just cause". (Pet App.85)(p 19 in the bargaining agreement), he further alleges that rehiring was mandated because of the permanent status of petitioner's employment (Pet Writ p. 40)

ARGUMENT

(a) The Court of Appeals Decision Is Incorrect, & The Petition Presents Issues of Fraud, Perjured Testimony, & A Blatant Disregard of The Rules of Civil Procedure & The Summary Judgment Rule.

1. No denial of the allegations above were denied by the respondent.

2. The District Judge by his so-called "pre-trial procedures put the onus on petitioner to present evidence opposing the respondent's summary judgment motion. The proper procedure would have been for respondent to present his evidence in affidavits or documents. Petitioner should have been granted more than six

(6) hours he received to put in his evidence. He had witnesses in Court & the District Judge ended the hearing without allowing those witnesses to be heard. The district Judge did not allow evidence to be elucidated on the illegal closed shop pre-hire preferential exclusive hiring hall issue (Pet Writ p. 17) He did not allow testimony relating to the vacation clause (Pet. App 130)(Transcript p. 73), Quote: Mr. Peltzman: I am going to look at the agreement, the vacation clause.

The Court: I don't give a darn about the vacation clause. I want to know whether you were discriminated against by the union in insisting that you pay the initiation fee. Now get to that issue. Stop all this palaver.

Mr. Peltzman: Yes, your Honor.

The Court: Get to that issue. Don't ask any other question about anything else.

I have been listening all day to your talk. That is the only issue here. Now get to it. End of Quote.

3. The testimony ofthe personnel manager, Capt. Whitcomb (Pet App. 134) (Tr 76 line 17) was to the effect that he spoke to Floyd Heptey sic (Hepting) a union official re the problem of a radio operator, & on line 20, Capt. Whitcomb says, Quote: I wasn't interested in the problem. It was a problem between the union & the member. End of Quote.

Petitioner argues that the company was required by the National Labor Relations Act to enquire of the petitioner exactly what his status in the union was before discharging him. He failed to do so. Instead, according to the memorandum of Floyd Hepting (App 99) to Mr. Smith, Capt. whitcomb promised to cooperate with the union on

January 18, 1971, seven (7) months before petitioners notice of discharge in Aug. 30th, 1971. (Pet App. 51)

Petitioner argues this cooperation included the instructions to the Capt. of the Ship to the effect that petitioner was given a letter saying he would not be rehired without a "clearance" from the union (Pleading in first appeal).

(b) The Petition Contains Conflicting Decisions of the 2nd Circuit & the 5th Circuit Court of Appeals, Which are Irreconciliable & Which Should be Decided By This Court.

1. This argument is covered in (Pet. Writ p. 15-16).

(c) The union security clause is illegal & unenforcible in nineteen(19) States, & the bargaining agreement, therefore, is discriminatory of seamen's rights in the thirty one (31) States

which recognize union security clauses as a valid cause for discharge of employees who are not members of the union.

1. This point covered in (Pet Writ 15) & in Petitioners Brief below as point IV p. 29-31, Conflict between Federal, State or Labor Law vis a vis Maritime Law, Concerning seamen's employment, must be resolved by Maritime Law, & in Petitioner's petition for rehearing en banc p. 3, wherein he stresses the uniformity principles of the Maritime Law which are among the oldest & most unquestioned principles of Law, citing J. Reed's dissenting opinion in Wilburn Boat Co., v. Firemans Ins. Co., p. 327.

"One rule of Law stands unquestioned, That is that all Courts, State or Federal which have jurisdiction to enforce Maritime or Admiralty substantive rights must do so according to Federal Admiralty Law",

(citing the authorities including 64 Harv L Rev 246; Stevens - Erie RR v. Tompkins, & the uniform General Maritime Law).

CONCLUSION

The Petition For Writ Of Certiorari Should be Granted.

Respectfully submitted,

Archie Peltzman,
Petitioner Pro Se.